

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILLS NOS. 1021 & 870
94TH GENERAL ASSEMBLY

Reported from the Committee on Pensions, Veterans' Affairs and General Laws, March 27, 2008, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

4656S.05C

AN ACT

To repeal sections 334.010, 334.120, 334.260, and 376.1753, RSMo, and to enact in lieu thereof nine new sections relating to the practice of midwifery, with penalty provisions and an emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 334.010, 334.120, 334.260, and 376.1753, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 324.1230, 324.1233, 324.1236, 324.1239, 324.1242, 324.1243, 324.1245, 334.010, and 334.120, to read as follows:

324.1230. 1. As used in sections 324.1230 to 324.1245, the following terms shall mean:

- (1) "Antepartum", before birth;**
- (2) "Board", the board of direct-entry midwives;**
- (3) "Client", a person who retains the services of a direct-entry midwife;**
- (4) "Direct-entry midwife", any person who is certified by the North American Registry of Midwives (NARM) as a certified professional midwife (CPM) and provides for compensation those skills relevant to the care of women and infants in the antepartum, intrapartum, and postpartum period;**
- (5) "Division", the division of professional registration;**
- (6) "Intrapartum", during birth;**
- (7) "Postpartum", after birth.**
- (8) "Practice of direct-entry midwifery", the science and art of examination, evaluation, assessment, counseling and treatment of**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 women and infants in the antepartum, intrapartum and postpartum
18 period by those methods commonly taught in any midwifery school,
19 college or midwifery program in a university which has been
20 accredited by the Midwifery Education Accreditation Council, its
21 successor entity or approved by the board; including identifying and
22 referring women who require obstetrical or other professional care. It
23 shall not include the use of operative surgery, nor the prescribing of
24 drugs. The practice of direct-entry midwifery is not the practice of
25 medicine or osteopathy within the meaning of chapter 334, RSMo, and
26 not subject to the provisions of the chapter. The practice of direct-
27 entry midwifery is not the practice of nurse-midwifery or nursing
28 within the meaning of chapter 335, RSMo, and not subject to the
29 provisions of the chapter.

30 2. There is hereby created and established within the division of
31 professional registration a "Board of Direct-Entry Midwives".

32 3. No later than December 31, 2008, the governor shall appoint
33 members to the board with the advice and consent of the senate. The
34 board shall consist of five members, each of whom is a United States
35 citizen and who has been a resident of this state for at least one year
36 immediately preceding their appointment. Of these five members, one
37 member shall be a public member, four members shall be licensed
38 direct-entry midwives who attend births in homes or other out-of-
39 hospital settings, provided that the first midwife members appointed
40 need not be licensed at the time of appointment if they are actively
41 working toward licensure under the provisions of sections 324.1230 to
42 324.1245.

43 4. The initial appointments to the board shall be one member for
44 a term of one year, one member for a term of two years, one member for
45 a term of three years, one member for a term of four years and one
46 member for a term of five years. After the initial terms, each member
47 shall serve a five-year term. No member of the board shall serve more
48 than two consecutive five-year terms. The organization of the board
49 shall be established by members of the board. Upon the death,
50 resignation, or removal from office of any member of the board, the
51 appointment to fill the vacancy shall be for the unexpired portion of
52 the term so vacated and shall be made within sixty days after the
53 vacancy occurs.

54 **5. The public member shall not be a member of any profession**
55 **regulated by chapter 334 or 335, RSMo, or under sections 324.1230 to**
56 **324.1245, or the spouse of such person. The public member is subject**
57 **to the provisions of section 620.132, RSMo.**

58 **6. The board may sue and be sued in its own name and its**
59 **members need not be named parties. Members of the board shall not**
60 **be personally liable, either jointly or severally, for any act or acts**
61 **committed in the performance of their official duties as board**
62 **members. No board member shall be personally liable for any court**
63 **costs which accrue in any action by or against the board.**

64 **7. Notwithstanding any other provision of law to the contrary,**
65 **any appointed member of the board shall receive as compensation an**
66 **amount established by the director of the division of professional**
67 **registration not to exceed fifty dollars per day for board business plus**
68 **actual and necessary expenses. The director of the division of**
69 **professional registration shall establish by rule the guidelines for**
70 **payment.**

71 **8. The board shall employ administrative and clerical personnel**
72 **necessary to enforce the provisions of sections 324.1230 to 324.1245.**

73 **9. The board shall hold an annual meeting at which time it shall**
74 **elect from its membership a chairman and secretary. The board may**
75 **hold such additional meetings as may be required in the performance**
76 **of its duties, provided that notice of every meeting shall be given to**
77 **each member at least ten days prior to the date of the meeting. A**
78 **quorum of the board shall consist of a majority of its members.**

79 **10. No licensing activity or other statutory requirements shall**
80 **become effective until expenditures or personnel are specifically**
81 **appropriated for the purpose of conducting the business as required to**
82 **administer the provisions of sections 324.1230 to 324.1245 and the**
83 **initial rules filed have become effective.**

324.1233. 1. The board shall issue licenses to applicants who:

2 **(1) Present evidence of current certification by the North**
3 **American Registry of Midwives (NARM) as a certified professional**
4 **midwife (CPM);**

5 **(2) Present evidence of current certification in basic life support**
6 **(BLS) for healthcare providers, and either infant cardiopulmonary**
7 **resuscitation (CPR) or neonatal resuscitation;**

8 (3) Pay a licensure fee set by the board; and
9 (4) Comply with the written disclosure requirement under
10 subsection 1 of section 324.1239.

11 2. The board shall renew licenses to applicants who:
12 (1) Present evidence of attendance at a minimum of ten hours
13 per year of continuing education in midwifery or related fields;
14 (2) Present evidence of attendance at a minimum of three hours
15 per year of peer review;
16 (3) Present evidence of current certification in basic life support
17 (BLS) for healthcare providers, and either infant cardiopulmonary
18 resuscitation (CPR) or neonatal resuscitation; and
19 (4) Pay a renewal fee set by the board.

20 3. The board shall develop practice guidelines consistent with
21 standards regarding the practice of midwifery established by the
22 National Association of Certified Professional Midwives or a successor
23 organization whose essential documents include without limitation
24 subject matter concerning scope of practice, standards of practice,
25 informed consent, appropriate consultation, collaboration or referral,
26 including the development of collaborative relationships with other
27 healthcare practitioners who can provide care outside the scope of
28 midwifery practice when necessary.

29 4. Any license issued under sections 324.1230 to 324.1245 shall
30 expire three years after the date of its issuance. The board may refuse
31 to issue or renew any certificate of registration or authority, permit, or
32 license required pursuant to this chapter for one or any combination
33 of causes stated in subsection 5 of this section. The board shall notify
34 the applicant in writing of the reasons for the refusal and shall advise
35 the applicant of the applicant's right to file a complaint with the
36 administrative hearing commission as provided by chapter 621, RSMo.
37 As an alternative to a refusal to issue or renew any certificate,
38 registration, or authority, the board may, at its discretion, issue a
39 license which is subject to probation, restriction, or limitation to an
40 applicant for licensure for any one or any combination of causes stated
41 in subsection 5 of this section. The board's order of probation,
42 limitation, or restriction shall contain a statement of the discipline
43 imposed, the basis therefore, the date such action shall become
44 effective, and a statement that the applicant has thirty days to request

45 in writing a hearing before the administrative hearing commission. If
46 the board issues a probationary, limited, or restricted license to an
47 applicant for licensure, either party may file a written petition with the
48 administrative hearing commission within thirty days of the effective
49 date of the probationary, limited, or restricted license seeking review
50 of the board's determination. If no written request for a hearing is
51 received by the administrative hearing commission within the thirty-
52 day period, the right to seek review of the board's decision shall be
53 considered as waived.

54 5. The board may cause a complaint to be filed with the
55 administrative hearing commission as provided by chapter 621, RSMo,
56 against any holder of any certificate of registration or authority,
57 permit, or license required by this chapter or any person who has
58 failed to renew or has surrendered the person's certificate of
59 registration or authority, permit, or license for any one or any
60 combination of the following causes:

61 (1) Violates any provision of sections 324.1230 to 324.1245 or the
62 rules adopted thereafter;

63 (2) Engages in conduct detrimental to the health or safety of
64 either the mother or infant, or both, as determined by the board; or

65 (3) Has an unpaid judgment resulting from providing direct-
66 entry midwifery services.

67 6. After the filing of such complaint before the administrative
68 hearing commission, the proceedings shall be conducted in accordance
69 with the provisions of chapter 621, RSMo. Upon a finding by the
70 administrative hearing commission that the grounds, provided in
71 subsection 5 of this section, for disciplinary action are met, the board
72 may, singly or in combination, warn, censure, or place the person
73 named in the complaint on probation on such terms and conditions as
74 the board deems appropriate for a period not to exceed ten years, or
75 may suspend the person's license, certificate, or permit for a period not
76 to exceed three years, or restrict or limit the person's license,
77 certificate, or permit for an indefinite period of time, or revoke the
78 person's license, certificate, or permit, or administer a public or private
79 reprimand, or deny the person's application for a license, or
80 permanently withhold issuance of a license or require the person to
81 submit to the care, counseling, or treatment of physicians designated

82 by the board at the expense of the individual to be examined, or
83 require the person to attend such continuing educational courses and
84 pass such examinations as the board may direct.

85 7. The division may promulgate rules necessary to implement the
86 administration of the licensure system established under sections
87 324.1230 to 324.1245. Any rule or portion of a rule, as that term is
88 defined in section 536.010, RSMo, that is created under the authority
89 delegated in this section shall become effective only if it complies with
90 and is subject to all of the provisions of chapter 536, RSMo, and, if
91 applicable, section 536.028, RSMo. This section and chapter 536, RSMo,
92 are nonseverable and if any of the powers vested with the general
93 assembly pursuant to chapter 536, RSMo, to review, to delay the
94 effective date, or to disapprove and annul a rule are subsequently held
95 unconstitutional, then the grant of rulemaking authority and any rule
96 proposed or adopted after August 28, 2008, shall be invalid and void.

324.1236. 1. There is hereby established in the treasury a fund
2 to be known as the "Board of Direct-Entry Midwives Fund". All fees of
3 any kind and character authorized to be charged by the board shall be
4 collected by the director of the division of professional registration and
5 shall be transmitted to the department of revenue for deposit in the
6 state treasury for credit to this fund, to be disbursed only in payment
7 of expenses of maintaining the board and for the enforcement of the
8 provisions of law concerning professions regulated by the board; and
9 no other money shall be paid out of the state treasury for carrying out
10 these provisions. Warrants shall be issued on the state treasurer for
11 payment out of said fund.

12 2. The state treasurer shall be custodian of the fund. In
13 accordance with sections 30.170 and 30.180, RSMo, the state treasurer
14 may approve disbursements. Upon appropriation, money in the fund
15 shall be used solely for the administration of sections 324.1230 to
16 324.1245. Notwithstanding the provisions of section 33.080, RSMo, to
17 the contrary, any moneys remaining in the fund at the end of the
18 biennium shall not revert to the credit of the general revenue
19 fund. The state treasurer shall invest moneys in the fund in the same
20 manner as other funds are invested. Any interest and moneys earned
21 on such investments shall be credited to the fund.

324.1239. 1. Every licensed direct-entry midwife shall present a

2 written disclosure statement to each client, which shall include but not
3 be limited to, the following:

4 (1) A description of direct-entry midwifery education and related
5 training;

6 (2) Licensure as a direct-entry midwife, including the effective
7 dates of the licensure;

8 (3) The benefits and risks associated with childbirth in the
9 setting selected by the client;

10 (4) A statement concerning the licensed direct-entry midwife's
11 malpractice or liability insurance coverage; and

12 (5) A plan, specific to the client, for transfer to medical care,
13 when necessary.

14 2. Notwithstanding any other provision of the law, a licensed
15 direct-entry midwife providing a service of direct-entry midwifery shall
16 not be deemed to be engaged in the practice of medicine, nursing,
17 nurse-midwifery, or any other medical or healing practice.

18 3. Nothing in sections 324.1230 to 324.1245 shall be construed to
19 apply to a person who provides information and support in preparation
20 for labor and delivery and assists in the delivery of an infant if that
21 person does not do the following:

22 (1) Advertise as a midwife or as a provider of midwife services;

23 (2) Assist, as primary attendant, in more than six births per year;

24 (3) Accept compensation for midwife services; and

25 (4) Use any words, letters, signs, or figures to indicate that the
26 person is a midwife.

27 4. A person who is a member of a recognized religious sect or
28 division, as defined in 26 U.S.C. 1402(g), by reason of which they are
29 conscientiously opposed to acceptance of benefits of any public or
30 private insurance which makes payments in the event of death,
31 disability, old age, or retirement or makes payments toward the cost of,
32 or provides services for, medical bills, including benefits of any
33 insurance system established under the federal Social Security Act, 42
34 U.S.C. 301 to 42 U.S.C. 1397jj, shall not be subject to the provisions of
35 sections 324.1230 to 324.1245.

36 5. The provisions of sections 324.1230 to 324.1245 shall be
37 remedial and curative in nature.

38 6. Nothing in sections 324.1230 to 324.1245 shall be construed to

39 **prohibit the attendance at birth of the mother's choice of family,**
40 **friends, or other uncompensated labor support attendants.**

41 **7. No person other than the licensed direct-entry midwife who**
42 **provided care to the client shall be liable for the direct-entry midwife's**
43 **negligent or willful and wanton acts or omissions. Except as otherwise**
44 **provided by law, no other licensed physician, licensed doctor of**
45 **osteopathy, certified nurse midwife, licensed nurse, hospital,**
46 **emergency medical technicians licensed under chapter 190, RSMo, or**
47 **agents thereof, shall be exempt from liability for their own subsequent**
48 **and independent negligent, grossly negligent, or willful and wanton**
49 **acts or omissions.**

50 **8. A licensed health care provider or facility shall not be**
51 **disciplined for assisting, enabling, aiding, procuring, advising or**
52 **encouraging any person licensed to practice direct-entry midwifery**
53 **who is practicing within the confines of this chapter.**

324.1242. No licensed direct-entry midwife shall be permitted to:

- 2 **(1) Prescribe drugs;**
- 3 **(2) Perform medical inductions or cesarean sections during the**
4 **delivery of an infant;**
- 5 **(3) Use forceps during the delivery of an infant; or**
- 6 **(4) Perform vacuum delivery of an infant.**

324.1243. A licensed direct entry midwife shall not administer
2 **prescription drugs, with exceptions limited to:**

- 3 **(1) Neonatal use of prophylactic ophthalmic medications, vitamin**
4 **K and oxygen;**
- 5 **(2) Maternal use of Rho (D) immune globulin, oxygen, postpartum**
6 **antihemorrhagics, and local anesthetic; and**
- 7 **(3) Any other prescription drug the Board of Direct Entry**
8 **Midwifery has deemed to be integral to pregnancy, birth, postpartum,**
9 **resuscitation or newborn care.**

324.1245. Any person who violates the provisions of sections
2 **324.1230 to 324.1245, or any rule or order made under sections 324.1230**
3 **to 324.1245 is guilty of a class A misdemeanor.**

334.010. 1. It shall be unlawful for any person not now a registered
2 **physician within the meaning of the law to practice medicine or surgery in any**
3 **of its departments, to engage in the practice of medicine across state lines or to**
4 **profess to cure and attempt to treat the sick and others afflicted with bodily or**

5 mental infirmities, [or engage in the practice of midwifery in this state,] except
6 as herein provided.

7 2. For the purposes of this chapter, the "practice of medicine across state
8 lines" shall mean:

9 (1) The rendering of a written or otherwise documented medical opinion
10 concerning the diagnosis or treatment of a patient within this state by a
11 physician located outside this state as a result of transmission of individual
12 patient data by electronic or other means from within this state to such physician
13 or physician's agent; or

14 (2) The rendering of treatment to a patient within this state by a
15 physician located outside this state as a result of transmission of individual
16 patient data by electronic or other means from within this state to such physician
17 or physician's agent.

18 3. A physician located outside of this state shall not be required to obtain
19 a license when:

20 (1) In consultation with a physician licensed to practice medicine in this
21 state; and

22 (2) The physician licensed in this state retains ultimate authority and
23 responsibility for the diagnosis or diagnoses and treatment in the care of the
24 patient located within this state; or

25 (3) Evaluating a patient or rendering an oral, written or otherwise
26 documented medical opinion, or when providing testimony or records for the
27 purpose of any civil or criminal action before any judicial or administrative
28 proceeding of this state or other forum in this state; or

29 (4) Participating in a utilization review pursuant to section 376.1350,
30 RSMo.

334.120. 1. There is hereby created and established a board to be known
2 as "The State Board of Registration for the Healing Arts" for the purpose of
3 registering, licensing and supervising all physicians and surgeons[, and
4 midwives] in this state. The board shall consist of nine members, including one
5 voting public member, to be appointed by the governor by and with the advice and
6 consent of the senate, at least five of whom shall be graduates of professional
7 schools accredited by the Liaison Committee on Medical Education or recognized
8 by the Educational Commission for Foreign Medical Graduates, and at least two
9 of whom shall be graduates of professional schools approved and accredited as
10 reputable by the American Osteopathic Association, and all of whom, except the

11 public member, shall be duly licensed and registered as physicians and surgeons
12 pursuant to the laws of this state. Each member must be a citizen of the United
13 States and must have been a resident of this state for a period of at least one
14 year next preceding his or her appointment and shall have been actively engaged
15 in the lawful and ethical practice of the profession of physician and surgeon for
16 at least five years next preceding his or her appointment. Not more than four
17 members shall be affiliated with the same political party. All members shall be
18 appointed for a term of four years. Each member of the board shall receive as
19 compensation an amount set by the board not to exceed fifty dollars for each day
20 devoted to the affairs of the board, and shall be entitled to reimbursement of his
21 or her expenses necessarily incurred in the discharge of his or her official
22 duties. The president of the Missouri State Medical Association, for all medical
23 physician appointments, or the president of the Missouri Association of
24 Osteopathic Physicians and Surgeons, for all osteopathic physician appointments,
25 in office at the time shall, at least ninety days prior to the expiration of the term
26 of the respective board member, other than the public member, or as soon as
27 feasible after the appropriate vacancy on the board otherwise occurs, submit to
28 the director of the division of professional registration a list of five physicians and
29 surgeons qualified and willing to fill the vacancy in question, with the request
30 and recommendation that the governor appoint one of the five persons so listed,
31 and with the list so submitted, the president of the Missouri State Medical
32 Association or the Missouri Association of Osteopathic Physicians and Surgeons,
33 as appropriate, shall include in his or her letter of transmittal a description of the
34 method by which the names were chosen by that association.

35 2. The public member shall be at the time of his or her appointment a
36 citizen of the United States; a resident of this state for a period of one year and
37 a registered voter; a person who is not and never was a member of any profession
38 licensed or regulated pursuant to this chapter or the spouse of such person; and
39 a person who does not have and never has had a material, financial interest in
40 either the providing of the professional services regulated by this chapter, or an
41 activity or organization directly related to any profession licensed or regulated
42 pursuant to this chapter. All members, including public members, shall be
43 chosen from lists submitted by the director of the division of professional
44 registration. The duties of the public member shall not include the determination
45 of the technical requirements to be met for licensure or whether any person meets
46 such technical requirements or of the technical competence or technical judgment

47 of a licensee or a candidate for licensure.

2 [334.260. On August 29, 1959, all persons licensed under
3 the provisions of chapter 334, RSMo 1949, as midwives shall be
4 deemed to be licensed as midwives under this chapter and subject
5 to all the provisions of this chapter.]

2 [376.1753. Notwithstanding any law to the contrary, any
3 person who holds current ministerial or tocological certification by
4 an organization accredited by the National Organization for
5 Competency Assurance (NOCA) may provide services as defined in
6 42 U.S.C. 1396 r-6(b)(4)(E)(ii)(I).]

2 Section B. Because of the need to provide clarity on the issue of the
3 practice of midwifery, section A of this act is deemed necessary for the immediate
4 preservation of the public health, welfare, peace and safety, and is hereby
5 declared to be an emergency act within the meaning of the constitution, and
6 section A of this act shall be in full force and effect upon its passage and
7 approval.

Bill ✓

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